



January 6, 1980

Thomas K. Berg  
United States Attorney  
District of Minnesota  
234 United States Courthouse  
Minneapolis, Minnesota 55401

Re: United States v. Reilly Tar & Chemical  
Corporation et al., No. 3-80-469

Dear Mr. Berg:

Enclosed for use in the above-named case are the first amended complaint, a motion to file the first amended complaint and a copy of the first amended complaint with all the changes underlined. The complaint has been amended to reflect the new language in Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §6973.

I have not added an additional claim based on the superfund legislation which became law on December 11, 1980. Section 106 of the new law, which provides for a cause of action similar to Section 7003, cannot yet be utilized. It requires "the President" to determine that there may be an imminent and substantial endangerment. Therefore, until the right to make the determination is delegated, we cannot assert the claim in any suits. In addition, the legislative history of Section 106 must be studied to make sure that the section, with its language requiring "an actual or threatened release of a hazardous substance from a facility," would be appropriate for use in this case.

I just received the Reilly Tar motion to dismiss. Since I have to be in Concord, New Hampshire the rest of this week for a settlement meeting and a court hearing, I won't be able to start work on our response until the 12th. Taking into account my other work and the necessary writing and review time,

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I could have a brief to you for filing by January 30. Can the hearing on the motion to dismiss be set for a date either before February 18 or after March 2? I'm planning to be out of the country between those dates.

Sincerely,

Assistant Attorney General  
Land and Natural Resources Division

By:

Erica L. Dolgin  
Attorney, Hazardous Waste Section

Enclosures

cc: Fred Stiehl  
Bob Leininger

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